

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of	)	
	)	
Rules and Policies Concerning Ownership of	)	MM Docket No. 01-
317		
Radio Broadcast Stations in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244
	)	

**REPLY COMMENTS OF THE MEDIA INSTITUTE**

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The Media Institute (TMI) is a nonprofit research foundation specializing in communications policy and First Amendment issues. TMI has long advocated a robust and dynamic press, a strong First Amendment, and a competitive communications industry. TMI hereby submits these Reply Comments in response to comments filed on the issue of diversity -- specifically, whether the Commission should focus on “viewpoint diversity,” “outlet diversity,” or “source diversity” in determining the future of the radio

multiple ownership rules in local markets.<sup>1</sup> TMI agrees with the view expressed by Clear Channel Communications, Inc., that “[w]hile the Commission may historically have perceived diversity in these three ... ways, the Commission’s concept of diversity is in need of substantial readjustment given the nature of today’s media industry in general, and today’s radio industry in particular.”<sup>2</sup>

We respectfully suggest that, given the unique characteristics of the radio industry, radio diversity should be defined in a very simple way: “lots of radio stations offering lots of different formats.” To put this in the Commission’s framework, this would mean embracing the concept of “outlet diversity” and introducing a new concept that we shall call “format diversity.” At the same time, this would mean de-emphasizing the concepts of “viewpoint diversity” and “source diversity” as applied to radio broadcasting, for reasons we shall explain below.

### **Problems With Viewpoint Diversity as Applied to Radio**

The Commission has always held out -- and the courts have always affirmed -- viewpoint diversity as a paramount goal for broadcast media with regard to the public interest. Regardless of medium, the Commission has attempted to apply the principle enunciated by the U.S. Supreme Court in *Associated Press*, that “the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”<sup>3</sup> The assumption here is that public opinion can be influenced by “political, editorial, or similar programming.”<sup>4</sup> However, in today’s radio world, viewpoint diversity runs squarely into two problems: (1) it is extremely difficult to measure directly; and (2) it is not particularly relevant to today’s radio content.

In an “ideal” world of maximum viewpoint diversity (as the FCC might envision it), every radio station would be owned by a different owner and each owner would have a different “viewpoint” (presumably political in nature). In addition, every station would

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<sup>1</sup> *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets and Definition of Radio Markets, Notice of Proposed Rulemaking*, 16 FCC Rcd. 19861, 19874 (rel. Nov. 9, 2001) (hereinafter “Radio Multiple Ownership NPRM”).

<sup>2</sup> Comments of Clear Channel Communications, Inc. at 15.

<sup>3</sup> *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

have a news and public affairs operation of significant magnitude through which the owner's viewpoint could be expressed. Such a model might have been within reach in the 1930s, but clearly this view has nothing in common with the reality of today's radio market. The Commission has realized this for some time, notably since 1996 when it expanded the number of radio stations in a market that one entity could own.

The problem of applying viewpoint diversity to radio is that radio has become a medium primarily of music and entertainment, rather than of news and public affairs. News on the typical FM music station is limited to a few minutes per hour of headlines, sports, traffic, and weather; the expression of political views is notably absent. Public affairs shows are typically consigned to low-audience time slots like Sunday morning. "Talk radio" formats tend to be limited to AM stations and National Public Radio. In fact, a 1998 study found that only 11 percent of Americans cited radio stations as their primary source of local news, compared to 41 percent for television and 17 percent for newspapers.<sup>5</sup> Thus, compared to other media, radio offers a comparatively small news and public affairs "window" for station owners' political and editorial comment -- the traditional bread and butter of "viewpoint" diversity.

Moreover, anecdotal evidence suggests that this limited available news time is not used to a significant extent for the broadcast of station owners' opinions or "viewpoints" of the sort contemplated by the FCC. This is not to say, however, that radio does not perform a valuable community service. In addition to entertaining their listeners (a worthwhile public interest goal in itself), radio stations do serve important community needs by broadcasting useful information like breaking news, storm alerts, and, more routinely, weather and traffic reports. Contemporary radio simply is not a "political" medium, if it ever was, so viewpoint diversity is hard to measure directly. This is why the Commission has tried (unsuccessfully) to use ownership diversity as a proxy for viewpoint diversity.

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<sup>4</sup> *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, Report and Order*, 45 F.C.C. 1476, 1477 (1964).

<sup>5</sup> Radio-Television News Directors Association, "Americans rely on local television news, rate it highly, and consider it fair," [www.rtnda.org/issues/survey.htm#download](http://www.rtnda.org/issues/survey.htm#download) (1998).

The answer to the viewpoint diversity question is not for the Commission to find other proxies or attempt to increase the amount of viewpoint diversity on the radio airwaves -- for this would mean an untenable (and illegal) tampering with program content. Rather, the Commission should realize that viewpoint diversity is not an especially relevant way to measure diversity in today's radio market -- and should look for a new diversity paradigm that *is* relevant to radio.

### **Problems With Source Diversity as Applied to Radio**

The Commission defines "source diversity" as "access to information and programming from multiple content providers"<sup>6</sup> -- in other words, multiple owners. But this "ownership diversity" also runs into two problems when applied to radio broadcasting: (1) source diversity is not a good proxy for viewpoint diversity; and (2) greater source diversity may actually result in *less* format diversity.

*Bad proxy.* As TMI stated in its comments in MM Docket No. 01-235, Cross Ownership of Broadcast Stations and Newspapers:

The Commission's desire to manipulate viewpoint diversity, however, presents a rather formidable problem. Short of becoming a programmer itself, or engaging in blatant censorship, the FCC does not have a legal way to mandate viewpoint diversity directly. That would require the type of pervasive and absolute authority over programming content long proscribed by statute.

Thus the FCC does the next best thing: It mandates ownership diversity as a proxy for viewpoint diversity. The Commission assumes that different owners will bring different editorial voices to the airwaves, resulting in a diversity of viewpoints. As the FCC pointed out when it adopted the newspaper / broadcast restriction:

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<sup>6</sup> Radio Multiple Ownership NPRM, *supra* note 1 at 19874.

“The significance of ownership from the standpoint of ‘the widest possible dissemination of information’ lies in the fact that ownership carries with it the power to select, to edit, and to choose the methods, manner and emphasis of presentation, all of which are a critical aspect of the Commission’s concern with the public interest.”

There is certainly no guarantee, however, that the Commission’s carefully chosen entrants will actually speak with different voices, or that broadcast outlets and newspapers owned by the same company will speak with the identical voice. This proxy approach relies on speculation about the likely viewpoints of media speakers, and thus is an imprecise means of effecting viewpoint diversity. In fact, viewpoint diversity cannot be created by regulation -- nor should it be. Ultimately that diversity is a function of the listening, viewing, and reading choices made by consumers in the information marketplace. The marketplace itself will determine the amount of diversity it wants from media speakers, and will do so more reliably and more efficiently than any regulatory agency.<sup>7</sup>

*Hindrance to format diversity.* Not only is source diversity a bad proxy for viewpoint diversity, but in today’s radio market it appears to work against one very relevant measure of diversity -- format diversity. Empirical evidence supports the premise that a single large owner will take greater steps to diversify the content of its stations than will a variety of small owners. There is an economic incentive to do so. A corporation that owns several stations in one market simply does not and will not program those stations to compete with one another.<sup>8</sup> Instead, that owner will diversify the formats of its sta-

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<sup>7</sup> Comments of The Media Institute in MM Docket No. 01-235, Cross Ownership of Broadcast Stations and Newspapers and MM Docket No. 96-197, Newspaper/Radio Cross-Ownership Waiver Policy at 4 (citations omitted).

<sup>8</sup> As Clear Channel, the largest common owner of radio stations in the United States, noted in its comments: “While competitors with one station have an incentive to air ‘greatest common denominator’ programming, an owner with multiple stations has an incentive to air more diverse programming to appeal to a broader audience across all demographics.” Comments of Clear Channel Communications, Inc. at 17.

tions so as to dominate in each format. A number of studies support this theory.<sup>9</sup> The Commission certainly believes this to be true, having stated that “the greater the increase in concentration of ownership, the greater the opportunity for diversity of content.”<sup>10</sup> □

The numbers plainly bear this out -- and even those who lament consolidation indirectly admit this. In its comments, the Office of Communication, Inc. of the United Church of Christ presented a study analyzing 33 Arbitron markets between 1993 and 2001 in which it found that, on average, the number of independent owners dropped in 28 markets, though the number of stations increased.<sup>11</sup> More importantly, a study of 17 markets revealed that even though 5.7 stations were, on average, added to each market, the number of formats increased “only” by an average of 1.5. This last point bears repeating: The number of formats *increased* by an average of 1.5.

Thus, source diversity should not be a factor in considering diversity in the radio industry. TMI respectfully disagrees with the views forwarded by commenters who urged the Commission to focus on source diversity, and who argued that the current statutory limits on the number of stations that can be owned by a particular licensee in a given market should be decreased.<sup>12</sup> In reality, attempts to increase source diversity may have the unintended consequence of *reducing* format diversity.

### **Outlet Diversity: A Good Measure**

The third type of diversity contemplated in the Commission’s NPRM is “outlet diversity,” defined as “access to multiple distribution channels (*e.g.*, radio, broadcast television, and newspapers) from which [the public] can access information and pro-

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<sup>9</sup> The primary study in this regard was performed by Mark Fratrik, who has demonstrated that the number of formats has actually increased since the Telecommunications Act of 1996 was passed. *See* Mark Fratrik, “Has format diversity continued to increase?” (March 26, 2002). Studies with similar conclusions are presented in the Comments of Radio One, Inc. at 7, n.18. This is true for both entertainment programming and news and information programming.

<sup>10</sup> *Review of the Commission’s Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking*, 10 FCC Rcd. 3524, 3551 (1995).

<sup>11</sup> Comments of the Office of Communication, Inc. of the United Church of Christ at 15.

<sup>12</sup> *See* Comments of American Women in Radio and Television at 7, asking the Commission to “recapture ‘ownership diversity’ as a sub-classification of source diversity and consider it in this proceeding”; Comments of the National Association of Black Owned Broadcasters, Inc. at 13: “the primary aspects of diversity the Commission should promote are viewpoint diversity and source diversity.”

gramming.”<sup>13</sup> We take this to mean not only the number of different media types that one can access, but the number of outlets within each medium as well.

Outlet diversity truly abounds. The sheer number of outlets for news, public affairs, and entertainment programming is dizzying, reaching numbers that might not have been contemplated even as recently as 1996. The FCC’s own figures state that as of June 30, 2001, there were 12,932 radio stations, 1,678 full power television stations, 2,396 low power television stations, and 232 Class A television stations.<sup>14</sup> That equals 17,298 broadcast stations in the United States.

Even if the Commission’s desired level of diversity -- whatever that level might be -- has not been achieved solely within the framework of the broadcast media, the Commission should note that there are 1,422 daily newspapers (reaching 55.8 million readers) and 7,915 weekly newspapers (reaching 81.6 million readers).<sup>15</sup> That adds 9,337 newspapers, or a new total of 26,635 outlets; cable television services reach another 67.7 million people.<sup>16</sup> Add in the fastest growing services -- direct broadcast satellite (DBS) and the Internet -- which serve nearly 15 percent and 56 percent of the American public, respectively, and it becomes clear that homogeneous news, information, and entertainment programming is virtually impossible, no matter how many stations are owned by one group.<sup>17</sup>

Outlet diversity strikes us as a common-sense, quantifiable, and relevant measure of diversity in the radio industry -- “lots of radio stations.”□

### **Format Diversity: Completing the Picture**

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<sup>13</sup> Radio Multiple Ownership NPRM, *supra* note 1 at 19874.

<sup>14</sup> *Id.* at 19875-76.

<sup>15</sup> *Id.* at 19876. The daily newspaper figures are from 2000 and the weekly newspaper figures are from 1996, meaning these totals have likely increased.

<sup>16</sup> *Id.*

<sup>17</sup> It is perfectly reasonable to equate radio with other media when calculating these figures. The Commission has previously stated that “the information market relevant to diversity includes not only television and radio outlets, but cable, other video media, and numerous print media as well.... These other media compete with broadcast outlets for the time that citizens devote to acquiring the information they desire.” *Amendment of Section 73.3555 of the Commission’s Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Report and Order*, 100 F.C.C.2d 17, 25 (1984). *See also, Sinclair Broadcast Group, Inc. v. F.C.C.*, 284 F.3d 148 (D.C. Cir. 2002) (Commission found that “radio and television serve as substitutes at least to some degree for diversity purposes” and that newspaper and cable systems



Some have opposed a reliance on outlet diversity alone, claiming that one could end up with a market consisting of many media outlets all sharing the same viewpoint or content. Quantity alone is not a sufficient measure of diversity in this view. We disagree, since we believe that the chance for increased diversity of all types goes up when the number of media outlets goes up. Nonetheless, we would address this concern by introducing another measure of diversity specifically for the radio industry: format diversity.

Among the broadcast media, radio is unique in that each station follows a particular “format,” or type of programming carefully calculated to draw listeners with certain demographic characteristics. Popular music formats include rock, country, easy listening, and urban contemporary, and even these major categories are broken into more specialized formats -- rock, for example, includes “Top 40,” “classic rock,” “light rock,” and “oldies.” Other formats include news, talk, sports, religious, educational, and agricultural programming, although the number of stations offering these formats is dwarfed by the number of stations playing music formats. One definitive source of media industry data lists 71 distinct radio formats on the air in 2001. Twenty-five of these -- mostly ethnic and nationality programming -- were offered by 10 or fewer stations nationwide, leaving approximately 50 formats in popular use.<sup>18</sup>

In any given radio market, then, it seems obvious that a good test for diversity is the number of different formats available. Format diversity appears plentiful at the present time -- indeed, it would be impossible to find a radio market in which only one or two formats were offered. This format diversity has come about not because of regulation, but because of marketplace forces, which operate very efficiently in the radio industry. Economic decisions regarding formats are driven by two factors: Arbitron ratings of listenership, and the flow of advertising dollars. If management determines that a station is underperforming in terms of audience share and advertising revenues, it is likely to change the station’s format to one it believes will better serve the community’s interests. Moreover, as discussed above, large group owners have an economic incentive to offer a

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“are an important source of news and information on issues of local concern and compete with radio and television.”).

<sup>18</sup> *Broadcasting & Cable Yearbook 2001* (Bowker, 2001) at D639.

different format on each station they own in a market. Thus, economic forces keep local radio markets dynamic and responsive to their communities by fostering a high level of format diversity -- “lots of different formats.”

## **Conclusion**

The Commission has already suggested that relaxation, not regulation, will lead to diversity. A number of rules thought to advance diversity have been repealed or remanded for further examination either administratively or judicially, because they simply did not achieve that goal. These include:

- The Fairness Doctrine;
- The financial interest and syndication rules;
- The prime time access rule;
- Equal employment opportunity rules;
- Various program log and other administrative requirements;
- The cap on the number of television and radio stations and cable entities one entity could own nationally;
- The “one-to-a-market” rule, to allow common ownership of a TV station and a number of AM and FM radio stations in the same market, based on market size; and
- The “duopoly” rule, to allow common ownership of two television stations in a market under certain conditions.

As we speak, the Commission is in the midst of an ongoing proceeding related to repeal of the newspaper/broadcast cross ownership ban. Its Chairman has, just recently, supported these measures, stating that diversity is not threatened, but thriving.<sup>19</sup> □

In the matter of radio ownership rules, we suggest it is time for the Commission to consider a new diversity paradigm for radio -- one that takes into account this medium’s unique characteristics. We propose that the Commission evaluate radio diversity on the basis of two measures: outlet diversity (variety of radio and other media outlets available, and number of radio stations in a market) and format diversity (number of radio program formats available in a market). Both of these are common-sense, quantifi-

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<sup>19</sup> Mark Jurkowitz, “FCC chairman: Consolidation hasn’t inhibited variety, fairness,” *Boston Globe*, April 17, 2002 at F1 (“I mean, I can watch everything from a thoughtful piece on history on the History Channel to ‘Fear Factor.’ I think we’re in a period right now where we’re seeing the very best that television has produced, and the very worst.”).

able measures that reflect the reality of today's radio industry -- "lots of radio stations offering lots of different formats."

As a corollary, we propose that viewpoint diversity and source (ownership) diversity be de-emphasized as applied to radio. Viewpoint diversity is hard to measure directly and is not strongly applicable to present-day radio. Source diversity is a poor (and now unnecessary) proxy for viewpoint diversity, and appears counterproductive to format diversity.

Both outlet diversity and format diversity are flourishing as a result of marketplace forces. Because regulation has not been necessary to bring about this high level of diversity, we urge the Commission to consider ways of relaxing the rules related to the number of stations that any single owner can possess in a given market.

Respectfully submitted,

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